

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 IO-13 ISO-00 CAB-02 CIAE-00 COME-00
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FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 2543
INFO AMEMBASSY PARIS PRIORITY
AMEMBASSY BERN

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SECSTATE PASS TO L - FOR LEE MARKS FROM SCHWEBEL

E.O. 11652: N/A
TAGS: EAIR, FR
SUBJECT: CIVAIR: CHANGE OF FAUGE

REF: (A) STATE 183582, (B) GENEVA 11106

1. RIPHAGEN CHAIRED TWO HONOR MEETINGS OF REUTER, CAFLISCH, FEVRE AND MYSELF JULY 25 IN WHICH THE FOLLOWING EMERGED.
2. FEVRE ANNOUNCED WITHOUT QUALIFICATION THAT FRENCH GOVERNMENT AGREES TO APPOINTMENT AS REGISTRAR OF CAFLISCH AND THAT PARIS HAD AUTHORIZED FRENCH CONSULATE TO ADVANCE 10,000 SWISS FRANCS FOR INITIAL EXPENSES OF ARBITRATION.
3. RIPHAGEN WILL SEND MESSAGES TO FRENCH AND US GOVERNMENTS AND EHRLICH INVITING AGREEMENT OF AGENTS AND EHRLICH TO APPOINTMENT OF CALIFSCH (SEE SEPTTEL FOR TEXTS OF THOSE MESSAGES).
4. IT IS IMPERATIVE THAT APPOINTMENT OF REGISTRAR BE

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SETTLED VERY PROMPTLY IF ARBITRATION PROCEEDINGS TO MOVE FORWARD AS SCHEDULED. ARRANGEMENTS MUST BE CONCLUDED WITHIN THE NEXT FEW WEEKS FOR SITE, TRANSLATION, OTHER SERVICES, ETC. IT TURNS OUT THAT THE ILO SITE ALREADY IS NOT AVAILABLE IN NOVEMBER.

5. AS TO RENUMERATION PAID IN RECENT BRITISH-FRENCH

ARBITRATION, CAFLISCH DID NOT FEEL AT LIBERTY TO INDICATE FIGURES INVOLVED BUT BELIEVED PARIS WOULD. SUGGEST EMBASSY PARIS ASK DE LACHERIERRE-WHAT RENUMERATION AND DIEM TRIBUNAL MEMBERS RECEIVED.

6. HOWEVER, CAFLISH NOTED THAT IN THAT CASE A VERY HIGH PER DIEM AND MODEST FEES WERE PAID "FOR FISCAL REASONS". REUTER SUGGESTED THAT, IN THIS CASE, SIMILAR PATTERN BE ADOPTED, I.E., THAT SAME PER DIEM BE PAID TO ARBITRATORS (AND, IT WAS AGREED, TO REGISTRAR SINCE, IF CAFLISCH, HE TOO WOULD BE ONLY TEMPORARILY PRESENT IN GENEVA FOR THE ARBITRATION); AND THAT, AFTER CASE IS ENDED, THE PARTIES SUPPLEMENT THAT HIGH PER DIEM WITH SUCH FEES AS THEY FEEL TO BE JUSTIFIED.

7. I RESPONDED THAT MY PERSONAL REACTION WAS THAT SUCH A PROCEDURE MIGHT NOT BE CONGENIAL IN WASHINGTON, WHERE WE WERE USED TO PAYING MODEST AND CAREFULLY MONITORED OFFICIAL EXPENSES INCLUDING PER DIEM AND JUSTIFIED LEGAL FEES. RIPHAGEN AND REUTER EXPRESSED UNDERSTANDING OF THIS POINT. THEY SAID THAT THEY WOULD PREFER TO FOLLOW PATTERN OF BRITISH/FRENCH ARBITRATION BUT WOULD BE AGREEABLE TO MORE MODEST PER DIEM AND INCREASED FEES.

8. REUTER, SAYING THAT HE DID NOT KNOW AMOUNTS WERE PAID IN BRITISH/FRENCH ARBITRATION, INQUIRED WHETHER CAFLISCH LIMITED OFFICIAL USE

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WOULD BE PREPARED TO ACCEPT A PROPORTION OF FEE HE RECEIVED AS REGISTRAR IN THAT ARBITRATION: E.G., IF THIS PROCEEDING TOOK ONE FIFTH THE TIME, WOULD HE ACCEPT ONE FIFTH OF THE RENUMERATION PAID HIM IN OTHER CASE. CAFLISCH SAID THAT HE WOULD NOT, FOR TWO REASONS. FIRST, RENUMERATION IN THAT CASE HE AND OTHERS CONCERNED BELIEVED TO HAVE BEEN TOO LOW (THE MORE SO IN THAT CASE SINCE HE WAS THEN LIVING IN GENEVA AND RECEIVED NO INFLATED PER DIEM OR INDEED ANY); SECOND, THE EFFORT HE WOULD HAVE TO PUT INTO SETTING UP THIS CASE WOULD NOT BE SIMPLY PROPORTIONATE TO ITS SHORTER EXTENSION.

9. UPSHOT OF EXCHANGE OF VIEWS ON RENUMERATION WAS THAT ALTERNATIVE COURSES WOULD BE PUT TO PARTIES: EITHER CAFLISCH COULD BE IMMEDIATELY APPOINTED, WITHOUT PRIOR AGREEMENT ON HIS COMPENSATION; OR THE PARTIES WOULD SETTLE COMPENSATION OF THE TRIBUNAL MEMBERS IMMEDIATELY WITH RIPHAGEN PURSUANT TO THE COMPROMIS. IT WAS NOTED THAT THE REGISTRAR CHARACTERISTICALLY RECEIVES 25 LESS THAN AN ARBITRATOR, AND THAT THE PRESIDENT CHARACTERISTICALLY RECEIVES 25 MORE. THUS CAFLISCH'S COMPENSATION WOULD BE 25 LESS THAN THAT AGREED FOR ARBITRATOR.

ACCORDINGLY, I RECOMMEND THAT YOU EITHER NOW UNCONDITION-
ALLY AGREE TO CAFLISCH'S APPOINTMENT OR PURSUE
COMPENSATION WITH RIPHAGEN. RIPHAGEN SAID THAT, WHILE
UNDER TERMS OF COMPROMIS, COMPENSATION IS TO BE SETTLED BY
PARTIES IN CONSULTATION WITH HIM, HE IN TURN WOULD WISH
TO CONSULT HIS FELLOW ARBITRATORS BEFORE AGREEING ON
FIGURES.

10. AS TO LENGTH OF CASE, REUTER AND RIPHAGEN AGREED
WITH CAFLISCH THAT IT PROBABLY WOULD TAKE AT LEAST
UNTIL CHRISTMAS FOR DELIBERATIONS OF TRIBUNAL, ISSUANCE
OF DISPOSITIF, DRAFTING OF AWARD, AND TRANSLATION AND

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PUBLICATION OF AWARD. CAFLISCH MADE CLEAR THAT HE WISHES
TO RETURN TO VIRGINIA ASAP AND WOULD DO BEST TO MINIMIZE
LENGTH OF PROCESS. HE ALSO STATED THAT, IF THERE WOULD
BE NO NEED FOR HIM TO RETURN TO GENEVA AFTER HIS AUGUST
19 DEPARTURE BEFORE THE TRIBUNAL CONVENES MID-NOVEMBER,
HE WOULD BE PLEASED. MUCH DEPENDS ON HIS COMPLETING
ARRANGEMENTS BEFORE HIS AUGUST 19 DEPARTURE.

11. CAFLISCH INDICATED THAT HE HAD CHANGED HIS MIND
ABOUT THE NEED FOR HAVING A DEPUTY REGISTRAR, NOT
LEAST BECAUSE A GOOD BILINGUAL DEPUTY IS NOT AVAILABLE.
HE SUGGESTED THAT IT WOULD SUFFICE IF HE ENGAGED AN
EXPERIENCED SECRETARY FOR THE PROCEEDINGS AND THAT
PROCESSES WOULD BE EXPEDITED IF THE PARTIES WOULD DIRECTLY
EXCHANGE THEIR MEMORIALS THAN THAN DOING SO THROUGH THE

REGISTRY. RIPHAGEN AND REUTER AGREED TO RECOMMEND THAT TO THE PARTIES.

12. IT WAS FURTHER AGREED, SUBJECT TO EHRLICH'S VIEWS AND THOSE OF PARTIES, THAT THE TRIBUNAL SHOULD NOT HAVE A HOUSEKEEPING AND PROCEDURAL MEETING AT AN EARLY JUNC-LIMITED OFFICIAL USE

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TURE, BUT THAT IT SHOULD MEET NOVEMBER 17 AND 18 IN GENEVA TO REVIEW AND RATIFY PROCEDURAL ARRANGEMENTS AND ENSURE THAT ALL IS IN ORDER FOR OPENING ORAL HEARINGS NOVEMBER 20.

13. CAFLISCH REQUESTED, WERE HE TO BE APPOINTED, EARLY GUIDANCE ON THE FOLLOWING:

(A) WOULD THE PARTIES BE CONTENT WITH SIMULTANEOUS TRANSLATION OF ORAL PROCEEDINGS PLUS DISTRIBUTION OF A VERBATIM WRITTEN RECORD THE MORNING AFTER A FULL DAY'S ARGUMENT IN THE LANGUAGE OF ARGUMENT? CAFLISCH NOTED THAT A TRANSLATION OF VERBATIM TEXT COULD NOT IN ANY EVENT BE COMPLETED DURING THE ORAL HEARINGS AND THAT, SINCE NO MEMORIALS FOLLOW ORAL HEARINGS, SUCH A TRANSLATION BY THE REGISTRY WOULD NOT BE OF MUCH PRACTICAL USE. THIS WOULD BE EXPENSIVE (PERHAPS \$15,000 FOR THIS ITEM ONLY).

(B) WOULD THE TRIBUNAL REQUIRE SIMULTANEOUS TRANSLATION OR OTHER PROFESSIONAL INTERPRETATION FOR ITS DELIBERATIONS? RIPHAGEN SAID HE FELT FULLY AT HOME IN ENGLISH AND FRENCH. REUTER SAID HE FELT HE DID NOT NEED TRANSLATION FROM ENGLISH OF WHAT OTHERS SAID BUT HE WISHED TO BE ABLE TO SPEAK IN FRENCH IF NEEDS BE. WOULD EHRLICH REQUIRE TRANSLATION FROM FRENCH OF REUTER'S STATEMENTS? IF SO, WOULD HE BE CONTENT WITH CAFLISCH'S INFORMAL TRANSLATIONS? CAFLISCH IS PERFECTLY BILINGUAL. CAFLISCH NOTED THAT IN RECENT FRENCH/BRITISH DELIBERATIONS, THERE WAS NO TRANSLATION BUT THAT ENGLISH WAS GENERALLY USED.

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(C) DO THE PARTIES AGREE TO HIRING INTERPRETERS ETC FOR THREE DAYS EVEN THOUGH HEARING SCHEDULED FOR TWO IN CASE THERE IS OVERRUN?

(D) DO THEY AGREE TO ENGAGING A TRANSLATOR FOR
A MONTH TO DO TRANSLATION FOR TRIBUNAL AND TO
TRANSLATE AWARD?

14. CAFLISCH PROMISED TO PRODUCE EARLY ESTIMATE OF
COSTS, WHICH, HOWEVER, TURNS SOMEWHAT ON ANSWERS TO PRIOR
PARA.

15. A KEY QUESTION WHICH CAFLISCH URGED THE PARTIES TO
SETTLE AS LONG BEFORE ORAL HEARINGS AS POSSIBLE IS: WHICH
PARTY WILL FIRST ADDRESS THE TRIBUNAL? RIPHAGEN AGREED
THAT THIS IS CRITICAL POINT WHICH, IF NOT DETERMINED BY
PARTIES, WILL ENGAGE TRIBUNAL BEFORE ORAL HEARINGS BEGIN.

16. SWISS AUTHORITIES, WHO ARE DELIGHTED AT PROSPECT OF
ARBITRATION TAKING PLACE IN GENEVA, ANXIOUS THAT AT LEAST
ONE SESSION, PERHAPS PURELY FORMAL, TAKE PLACE IN HISTORIC
ROOM OF ALABAMA ARBITRATION HEARINGS. THIS ROOM IS NOT
SUITABLE SITE FOR WHOLE OPERATION.

17. AS TO SITE FOR HEARINGS, CAFLISCH SUGGESTS FORMER
ILO BUILDING NOW USED BY GATT; OR EFTA HEADQUARTERS; OR
THE SWISS CONFERENCE CENTER. ALL ARE WELL EQUIPPED.

18. I ASKED FEVRE WHETHER FRENCH AND U.S. MISSIONS
COULD HANDLE HOUSEKEEPING. HE REPLIED DEFINITELY NOT;
THE FRENCH MISSION IS MUCH TOO SMALL NOT SET UP TO HANDLE
THIS SORT OF THING. VANDEN HEUVEL

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